

PROCEDURE 6. CONCEALED MONITORING

A. APPLICABILITY AND SCOPE

1. This procedure applies to concealed monitoring only for foreign intelligence and counterintelligence purposes conducted by a DoD intelligence component within the United States or directed against a United States person who is outside the United States where the subject of such monitoring does not have a reasonable expectation of privacy, as explained in section B., below, and no warrant would be required if undertaken for law enforcement purposes.

2. Concealed monitoring in the United States for foreign intelligence and counterintelligence purposes where the subject of such monitoring has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes shall be treated as "electronic surveillance within the United States"^f under Part 1 of Procedure 5, and processed pursuant to that procedure.

3. Concealed monitoring for foreign intelligence and counterintelligence purposes of a United States person abroad where the subject of such monitoring has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes shall be treated as "electronic surveillance-outside the United States" under Part 2 of Procedure 5, and processed pursuant to that procedure.

4. Concealed monitoring for foreign intelligence and counterintelligence purposes when the monitoring is a signals intelligence activity shall be conducted pursuant to Part 3 of Procedure 5.

B. EXPLANATION OF UNDEFINED TERMS

1. Concealed monitoring means targetting by electronic, optical, or mechanical devices a particular person or a group of persons without their consent in a surreptitious and continuous manner. Monitoring is surreptitious when it is targeted in a manner designed to keep the subject of the monitoring unaware of it. Monitoring is continuous if it is conducted without interruption for a substantial period of time.

2. Monitoring is within the United States if the monitoring device, or the target of the monitoring, is located within the United States.

3. Whether concealed monitoring is to occur where the subject has a reasonable expectation of privacy is a determination which depends upon the circumstances of a particular case, and shall be made only after consultation with the legal office responsible for advising the DoD intelligence component concerned. Reasonable expectation of privacy is the extent to which a reasonable person in the particular circumstances involved is entitled to believe his or her actions are not subject to monitoring by electronic, optical, or mechanical devices. For example, there are ordinarily reasonable expectations of privacy in work spaces if a person's actions and papers are not subject to ready observation by others under normal working conditions. Conversely, a person walking out of his or her residence into a public street ordinarily would not have a reasonable expectation that he or she is not being observed or even photographed; however, such a person ordinarily would have an expectation of privacy within his or her residence.

C. PROCEDURES

1. Limitations on use of concealed monitoring. **Use** of concealed monitoring under circumstances when the subject of such monitoring has no reasonable expectation of privacy is subject to the following limitations:

a. Within the United States, a DoD intelligence component may conduct concealed monitoring only on an installation or facility owned or leased by DoD, or otherwise in the course of an investigation conducted pursuant to the Agreement Between the Secretary of Defense and the Attorney General (reference (g)).

b. Outside the United States, such monitoring may be conducted on installations and facilities owned or leased by the Department of Defense. Monitoring outside such facilities shall be conducted after coordination with appropriate host country officials, if such coordination is required by the governing Status of Forces Agreement, and with the Central Intelligence Agency.

2. Required determination. Concealed monitoring conducted under subsection C1., requires approval by an official designated in subsection C.3., below, based on a determination that such monitoring is necessary to the conduct of assigned foreign intelligence or counterintelligence functions, and does not constitute electronic surveillance under Parts 1 or 2 of Procedure 5.

3. Officials authorized to approve concealed monitoring. Officials authorized to approve concealed monitoring under this procedure include the Deputy Under Secretary of Defense (Policy); the Director, Defense Intelligence Agency; the Director, National Security Agency; the Assistant Chief of Staff for Intelligence, Department of Army; the Director, Naval Intelligence; the Director of Intelligence, U.S. Marine Corps; the Assistant Chief of Staff, Intelligence, U.S. Air Force; the Commanding General, Army Intelligence and Security Command; the Director, Naval Investigative Service; and the Commanding Officer, Air Force Office of Special Investigations.